The opinion in support of the decision being entered today was <u>not</u>
written for publication and is <u>not</u> binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

<u>Ex parte</u> ERIN M. BOURKE-DUNPHY and JEFF A. ZIMNIEWICZ

_____

Appeal No. 2006-0236
Application No. 09/710,143

_____

HEARD: FEBRUARY 8, 2006[1]

_____

Before THOMAS, JERRY SMITH and SAADAT, <u>Administrative Patent
Judges</u>.

THOMAS, <u>Administrative Patent Judge</u>.

<u>DECISION ON APPEAL</u>

Appellants have appealed to the Board from the examiner's

final rejection of claims 1 through 21.

Representative claim 1 is reproduced below:

> 1.   A system that facilitates configuration of a
> software system being installed, comprising:
>
> a setup component that receives information
> indicative of a location scenario related to where the
> software system is being installed, configuration
> characteristics for the software system determined based at
> least in part on the location scenario.

_____

[1]The hearing was conducted as a telephone hearing at
appellants' request.

The following references are relied on by the examiner:

Amberg et al. (Amberg)   5,963,743   Oct. 5, 1999
Jones et al. (Jones)   5,666,501   Sep. 9, 1997

Claims 1, 2, 5 through 9, 13 through 16 and 19 through 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Amberg. Claims 3, 4, 10 through 12 and 17 through 20 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon Amberg in view of Jones.

Rather than repeat the positions of the appellants and the examiner, reference is made to the brief, the reply brief and the supplemental reply brief for appellants' positions, and to the answer and supplemental answer for the examiner's positions.

                            OPINION

Generally for the reasons set forth by the examiner in the answer, as expanded upon here, we sustain the rejections of all claims on appeal.

The top of page 3 of the principal brief on appeal indicates that all claims fall together. The actual arguments presented in the brief and various reply briefs consider each independent claim together and to be consistent with the subject matter generally of independent claim 1. No arguments are presented to us as to any dependent claim rejected under 35 U.S.C. § 102.

Moreover, as to the rejection of various dependent claims under
35 U.S.C. § 103, appellants only address this issue at page 5 of
the principal brief on appeal. There they do not argue that
Amberg and Jones are not properly combinable within 35 U.S.C.
§ 103, only, in effect, that if combined they do not meet the
subject matter of the independent claims on appeal in the same
manner as the independent claims are argued under 35 U.S.C. § 102
in the first stated rejection.

At pages 4 and 5 of the principal brief, appellants do not
argue the set up component feature of independent claim 1 on
appeal but only the alleged absence of configuration
characteristics based in part upon the location scenario. It is
recognized that a network is utilized and it is also urged that
this network is only used for communication purposes. Amberg is
stated to simply disclose configuring a target system solely
according to a customer's order. On the other hand, the reply
brief and supplemental reply brief argue both the set up
component and the configuration characteristics of representative
independent claim 1 on appeal.

For his part, the examiner states that the set up component
includes an indicator that specifies the target system 160 in
figure 1, for example, of Amberg. The examiner maintains the

view that each customer order for a specific target computer

system is equivalent to identifying each "location scenario" to

the extent claimed and correlates this feature to figure 3A

element 300 of Amberg. For emphasis, the examiner adds at page 2

of the supplemental answer that "[b]ecause in Amberg et al., at

least each order, build-to-order, must return back to a unique

identifier (specific location scenario) according to a customer-

specific information," identifying column 5, lines 54-65, further

indicating that the build-to-order is provided to the software

installation system according to column 5, lines 47 through 50.

Amberg shows distinct embodiments in figures 1 and 2. The

nature of the configuration in terms of hardware and software is

embodied within the step disk 150 generated in figure 1 based

upon the customer's order 92 through the operation of the step

maker 140 as argued by the examiner. This yields a sequencing

program 204 which, apparently may be placed within the physical

components of a target system 160 and actually configured, such

as on a factory floor. The example in figure 2 does not utilize

the step disk 150 of figure 1 and eliminates the step maker 140

permitting the actual remote generation of a descriptor file, the

remote generation of a sequencing program 204 and the remote

installation of software for a target system that appears to be

remotely located from the factory or the various file servers

shown in figure 2. Therefore, it seems apparent that there

exists in Amberg component setup information that must

necessarily receive as a component information indicative of a

location scenario, that is, at least where the physical location

is of the target computer 160 and where the actual software is to

be installed. This installation operation or configuration of

the actual software occurs on the factory floor or remotely based

upon the initial customer order which includes the broadly

defined "location scenario" information.

In an abstract sense, therefore, a given customer order is

not applicable to any non-targeted computer no matter where it is

physically located. In other words, the context of operability

within the figure 1 and figure 2 embodiments is with respect to

the targeted computer located in a given physical location that

apparently is known in accordance with the customer's order and

the generation of the descriptor file 96.

Other customer specific information that appears to be

provided has been identified by the examiner at column 5. These

include the customer specific information at column 5, lines

63 through 65 identifying the customer's address and telephone

number, which implies a general physical location, all of which

is part of the base assembly record or BAR file 330 in figure 3A

and 360 in figure 3B. The broadly defined "location scenario" of

the claims on appeal does not require that the customer placing

an order has to be at the physical location of the computer where

it is fabricated and/or where the software is installed.

Moreover, the particular order allows the customer to choose

a particular computer manufacturer and particular computer

families and to otherwise specify the "type" of target

computer at column 3, line 39. Types of computers and computer

families include servers, desktop computers, laptop computers and

those specifically designed for media use or scientific use.

Furthermore, column 7 and figure 7 of Amberg permit a

modification of the existing family of computers within the

database to include the addition of new families of computers.

The ability of the customer to specify the physical and software

components of a given computer permits the user to select or

choose the location where it is to be physically located and/or

shipped once it is fabricated/configured.

Amberg's descriptor file 96 in figures 1 and 2, for example,

correlates according to the discussion to the system descriptor

record. As recognized in the reply brief and supplemental reply

brief, the data associated with this identifies the embodiment to

be used in figure 1 or figure 2 of Amberg as well as contact

information and possibly the physical location of the customer.

In accordance with the "is being installed" language of

independent claim 1 on appeal, it is to be noted that this

feature is set forth in terms of "to be installed" in the other

independent claims 7, 8 and 15 on appeal. The showings in

figures 1 and 2 meet these limitations. According to Amberg's

teachings, the location of the actual customer may be where the

software is actually installed within the hardware of the

computer system as well as the factory floor or any other

physical location.

As noted earlier in this opinion, appellants appear to argue

the features of the independent claims in the context of the

rejection of various dependent claims under 35 U.S.C. § 103 at

page 5 of the principal brief. We note further here that Jones

teaches the location component and a location scenario for a

receiving computer as well as the actual configuration

characteristics including location scenario information to

buttress those of Amberg. As argued by the examiner, figure 2 is

illustrative of the complementary teachings in Jones. The

selectability of various software bundles for a user to select

from an element 220 in figure 2 that includes development,

7

administration, AI, and maintenance functionalities, each of which may correlate to different physical locations or applications of use.

Finally, we note in passing that appellants' observations at specification pages 1 and 2 with respect to background prior art appear to be inclusive of the subject matter set forth broadly in the independent claims on appeal. The user is given the ability to selectively install different applications or component software elements including the capability as disclosed of distinguishing one server at a corporate central Office from additional servers located at remote locations. At specification page 1, lines 22 through 25 it is stated that "[t]he particular application and/or services that should be installed at each server in the organization may vary as a function of the type of organization and the performance objectives of the administrator that implements the installation."

In view of the foregoing, the decision of the examiner rejecting various claims under 35 U.S.C. § 102 and 35 U.S.C. § 103 is affirmed.

Appeal No. 2006-0236
Application No. 09/710,143

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

JAMES D. THOMAS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
JERRY SMITH	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
	)	
MAHSHID D. SAADAT	)	
Administrative Patent Judge	)	

JDT:hh

9

Appeal No. 2006-0236
Application No. 09/710,143

AMIN & TUROCY, LLP
24TH FLOOR, NATIONAL CITY CENTER
1900 EAST NINTH STREET
CLEVELAND, OH 44114